

DALE L. ALLEN, JR., # 145279
 DIRK D. LARSEN, # 246028
 LOW, BALL & LYNCH
 505 Montgomery Street, 7th Floor
 San Francisco, California 94111-2584
 Telephone (415) 981-6630
 Facsimile (415) 982-1634

Attorneys for Defendant
 CITY OF CLEARLAKE
 (erroneously named herein as CLEARLAKE POLICE DEPARTMENT)

IN THE UNITED STATES DISTRICT COURT FOR
 THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

DAVID DAVIS and PAGE GEARHART-DAVIS
 PRO-SE,

Plaintiffs,

vs.

CLEARLAKE POLICE DEPARTMENT,

Defendants.

Case No. C 07-03365 EDL

DEFENDANT CITY OF
 CLEARLAKE'S OBJECTIONS TO
 EVIDENCE OFFERED BY
 PLAINTIFFS IN OPPOSITION TO
 DEFENDANT'S MOTION FOR
 SUMMARY JUDGMENT, OR IN
 THE ALTERNATIVE, PARTIAL
 SUMMARY JUDGMENT

Date: August 12, 2008
 Time: 9:30 a.m.
 Courtroom: E, 15th Floor
 Judge: Hon. Elizabeth D.
 LaPorte

Defendant CITY OF CLEARLAKE (the "City") respectfully submits the following objections to evidence offered by plaintiffs DAVID DAVIS and PAGE GEARHART-DAVIS ("Plaintiffs") in opposition to the City's motion for summary judgment, or in the alternative, partial summary judgment:

INTRODUCTION

Federal Rules of Civil Procedure, Rule 56(e) provides, in pertinent part:

(1) In General. A supporting or opposing affidavit must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit, a sworn or certified copy must be attached to or served with the affidavit. The court may

1 permit an affidavit to be supplemented or opposed by depositions, answers
2 to interrogatories, or additional affidavits.

3 (2) Opposing Party's Obligation to Respond. When a motion for summary
4 judgment is properly made and supported, an opposing party may not rely
5 merely on allegations or denials in its own pleading; rather, its response
6 must--by affidavits or as otherwise provided in this rule--set out specific
7 facts showing a genuine issue for trial. If the opposing party does not so
8 respond, summary judgment should, if appropriate, be entered against that
9 party.

10 Plaintiffs' declaration in support of their opposition brief contains the only the following
11 statements attempting to establish the identity and authenticity of the exhibits offered as evidence in
12 opposition to the City's present motion:

13 We, David Davis and Page Gearhart-Davis, declare as follows:

14 1. We have personal knowledge of the following facts, and could and
15 would testify competently thereto if called upon to do so.

16 2. A true and correct copy of All Exhibits [sic] has been filed with
17 Plaintiff(s) [sic] David Davis and Page Gearhart-Davis Opposition to
18 Defendant(s) [sic] Motion for Summary Judgment, or in Alternative [sic],
19 Partial Summary Judgment.

20 (Plaintiffs' Declaration in Opposition to Defendants' Motion, at 1.)

21 OBJECTION NO. 1:

22 The City objects to Plaintiffs' Exhibit 1: Plaintiffs' First Amended Complaint in the above-
23 captioned matter, when offered to support the following factual allegations for which no admissible
24 evidence has been provided by either side:

- 25 a. "Sgt. Celli entered and searched Plaintiff(s) [sic] vehicle without Plaintiff(s) [sic] consent
26 and without Plaintiff(s) [sic] giving him any probable cause for him to do so before
27 violating Plaintiff(s) [sic] 4th & 4th Amendment Right [sic]." (Plaintiffs' Opposition to
28 the City's Motion for Summary Judgment ["Opp."] at 6:19-22.)
- b. "Officer Miller told Plaintiff(s) [sic] 'we don't like your kind of people' and that
Plaintiff(s) [sic] 'need to move'." (Opp. at 6:23-24.)
- c. "When Officer Hobbs was questioned in court on December 4, 2006 what was blocking
the license plate Officer Hobbs could not recall what it was." (Opp. at 7:8-9.)
- d. "Officer Hobbs and Officer Hardesty [sic] approached the driver's side and Officer

Hobbs immediately started asking Plaintiff David Davis if he had an attitude and why he did not have his seat belt on.” (Opp. at 7:16-18.)

e. “Officer Hobbs asked David Davis for identification, which David Davis provided him with his California Interim Drivers License as DMV clearly states to be used as your temporary identification until your permanent arrives in the mail in four to six weeks.” (Opp. at 7:19-23.)

f. “Plaintiff David Davis started having an asthma attack while in the back of the patrol vehicle. Officer Hobbs then pulled David Davis from the vehicle, face down in to the dirt, and placed his knee into his back.” (Opp. at 8:11-14.)

g. “Plaintiff(s) [sic] were approached by Defendant(s) [sic] on 8-2-06 while pumping gas into their vehicle and were not committing any crime, which would constitute rise for suspicion of Clearlake Police Officers.” (Opp. at 12:5-7.)

h. “Some of Clear Lake’s [sic] own employees went to the Federal Bureau of Investigation regarding corruption within the Clear Lake [sic] Police Department.” (Opp. at 16:1-3.)

15 GROUNDS FOR OBJECTION NO. 1:

16 F.R.C.P. 56(e)(2): “When a motion for summary judgment is properly made and supported, an
17 opposing party may not rely merely on allegations or denials in its own pleading[.]” Here, Plaintiffs are
18 relying on allegations in their own pleading, not on admissible evidence.

19 OBJECTION NO. 2:

20 The City objects to Plaintiffs’ Exhibit No. 8, whose contents are not known to the City as said
21 exhibit was not included with Plaintiffs’ opposition brief, offered to support the allegation that Officer
22 Miller stated that David Davis was filling up a five-gallon gas can on August 2, 2006. (Opp. at 6:5-7.)

23 GROUNDS FOR OBJECTION NO. 2:

24 Because this exhibit was not provided, it may not support an allegation under F.R.C.P. 56(e). In
25 addition, the City asserts a due-process right to view and respond to the evidence offered against it. U.S.
26 Const. Amend. V.

27 OBJECTION NO. 3:

28 The City objects to Plaintiffs’ Exhibit No. 9, whose contents are not known to the City as said

1 exhibit was not included with Plaintiffs' opposition brief, offered to support allegations to the effect that
2 Officer Miller could not recall details of the incident of August 2, 2006. (Opp. at 6:7-11, 7:8-10.)

3 GROUND FOR OBJECTION NO. 3:

4 Because this exhibit was not provided, it may not support an allegation under F.R.C.P. 56(e). In
5 addition, the City asserts a due-process right to view and respond to the evidence offered against it. U.S.
6 Const. Amend. V.

7 OBJECTION NO. 4:

8 The City objects to Plaintiffs' Exhibit No. 10, purporting to be a letter from one Timin Murray,
9 offered to support the allegation that an audio recording of court proceedings of December 14, 2006, had
10 been altered. (Opp. at 6:11-13.)

11 GROUND FOR OBJECTION NO. 4:

12 F.R.E. 901, Authentication: Neither Plaintiffs' declaration nor the letter itself is sufficient to
13 support a finding that the document in question is what they claim it to be; the purported letter is not
14 sworn, and provides no indication that it refers to any particular audio recording, much less an audio
15 recording of a December 14, 2006 court proceeding. F.R.E. 702, Testimony by Experts: Neither
16 Plaintiffs' declaration nor the letter contain information sufficient to find (1) that Mr. Murray is a
17 qualified expert in the relevant field; (2) that his findings are based on sufficient facts or data; (3) that his
18 findings are the product of reliable principles and methods; and (4) that he has applied the principles and
19 methods reliably to the purported tape.

20 OBJECTION NO. 5:

21 The City objects to Plaintiffs' Exhibit 14, purporting to be plaintiff David Davis's interim
22 driver's license, offered to support the allegation that Mr. Davis had valid identification on August 3,
23 2006. (Opp. at 7:12-15, 12:23-13:1.)

24 GROUND FOR OBJECTION NO. 5:

25 F.R.E. 901, Authentication: Plaintiffs' declaration is not sufficient to support a finding that the
26 document in question is what they claim it to be, and the requirements of F.R.E. 901(b) and 902 are not
27 satisfied; there is insufficient foundational evidence to establish that the purported driver's license
28 actually was issued by the California Department of Motor Vehicles, that it was actually in effect at the

1 relevant time, and that it means what Plaintiffs claim it to mean. F.R.E. 602, Lack of Personal
2 Knowledge: Plaintiffs' declaration is not sufficient to support a finding that they have personal
3 knowledge of the origin of the document in question. F.R.E. 801 and 802, Hearsay: The document is an
4 out of court statement offered to prove the truth of the matter asserted, namely, that Mr. Davis possessed
5 a valid interim driver's license, and no exception applies. In addition, the document—if
6 genuine—merely shows that Mr. Davis was permitted to operate a motor vehicle at the time in question;
7 the document does not purport to be valid identification as claimed by Plaintiffs.

8 OBJECTION NO. 6:

9 The City objects to Plaintiffs' Exhibit No. 19, purporting to be a California Department of Motor
10 Vehicles Information Request for plaintiff Page Gearhart-Davis, offered to support the allegation that
11 Ms. Davis possessed a valid driver's license on August 3, 2006. (Opp. at 8:21-24, 13:24-25.)

12 GROUND FOR OBJECTION NO. 6:

13 F.R.E. 901, Authentication: Plaintiffs' declaration is not sufficient to support a finding that the
14 document in question is what they claim it to be, and the requirements of F.R.E. 901(b) and 902 are not
15 satisfied; there is insufficient foundational evidence to establish that this document actually was issued
16 by the California Department of Motor Vehicles, and that it means what Plaintiffs claim it to mean.
17 F.R.E. 602, Lack of Personal Knowledge: Plaintiffs' declaration is not sufficient to support a finding that
18 they have personal knowledge of the origin of the document in question. F.R.E. 801 and 802, Hearsay:
19 The document contains out of court statements offered to prove the truth of the matter asserted, and no
20 exception applies. In addition, the document does not on its face support the allegation that Ms. Davis
21 possessed a valid driver's license on August 3, 2006.

22 OBJECTION NO. 7:

23 The City objects to Plaintiffs' Exhibit 21, purporting to be a letter from one Theresa Stacy,
24 offered in support of allegations that Ms. Stacy overheard Capt. Larsen make "racial statements." (Opp.
25 at 9:8-11, 14:20-25.)

26 GROUND FOR OBJECTION NO. 7:

27 F.R.E. 901, Authentication: Plaintiffs' declaration is not sufficient to support a finding that the
28 document in question is what they claim it to be, and the requirements of F.R.E. 901(b) and 902 are not

1 satisfied; there is insufficient foundational evidence to establish that this document was actually written
2 by one Theresa Stacy, and that it contains an accurate version of any events. F.R.E. 602, Lack of
3 Personal Knowledge: Plaintiffs' declaration is not sufficient to support a finding that they have personal
4 knowledge of the origin of the document in question. F.R.E. 801 and 802, Hearsay: The document
5 contains out of court statements offered to prove the truth of the matter asserted, and no exception
6 applies. In addition, the document does not on its face support the allegation that Capt. Larsen made
7 "racial statements."

8 OBJECTION NO. 8:

9 The City objects to Plaintiffs' Exhibit No. 24, purporting to be photographs of a motorcycle,
10 offered to support the allegation that the motorcycle driven by Plaintiffs on September 27, 2006, was
11 registered, and that they were driving the motorcycle on private property. (Opp. at 9:12-14.)

12 GROUND FOR OBJECTION NO. 8:

13 F.R.E. 901, Authentication: Plaintiffs' declaration is not sufficient to support a finding that the
14 document in question is what they claim it to be, and the requirements of F.R.E. 901(b) and 902 are not
15 satisfied. F.R.E. 602, Lack of Personal Knowledge: Plaintiffs' declaration is not sufficient to support a
16 finding that they have personal knowledge of the origin of the document in question. In short, the
17 exhibit merely contains pictures of a motorcycle, without any evidence to support the allegations that
18 Plaintiffs rode it on private property when stopped on September 27, 2006, and that the motorcycle was
19 validly registered at that time.

20 OBJECTION NO. 9:

21 The City objects to Plaintiffs' Exhibit No. 25, purported to be a photograph of a van, offered to
22 support the allegation that the ball hitch on the van driven by Plaintiffs on December 27, 2006, cannot
23 have obstructed the license plate. (Opp. at 9:19-21.)

24 GROUND FOR OBJECTION NO. 9:

25 F.R.E. 901, Authentication: Plaintiffs' declaration is not sufficient to support a finding that the
26 document in question is what they claim it to be, and the requirements of F.R.E. 901(b) and 902 are not
27 satisfied. F.R.E. 602, Lack of Personal Knowledge: Plaintiffs' declaration is not sufficient to support a
28 finding that they have personal knowledge of the origin of the document in question. In short, the

1 exhibit merely contains photograph of a van, without any evidence to support the allegations that
2 Plaintiffs were driving this van on December 27, 2006, or that the van as photographed depicts the
3 appearance of the van at that time

4 OBJECTION NO. 10:

5 The City objects to Plaintiffs' Exhibit No. 26, whose contents are not known to the City as said
6 exhibit was not included with Plaintiffs' opposition brief, offered to support the allegation that "Sgt.
7 Michael Herman [sic] also claims at the beginning of the recorded interview [of January 12, 2008] that
8 Plaintiff David Davis mentions the alleged 911 call hang up which in fact you do not hear David Davis
9 making such a statement." (Opp. at 10:22-25.)

10 GROUND FOR OBJECTION NO. 10:

11 Because this exhibit was not provided, it may not support an allegation under F.R.C.P. 56(e). In
12 addition, the City asserts a due-process right to view and respond to the evidence offered against it. U.S.
13 Const. Amend. V.

14
15 Dated: July 29, 2008.

16 LOW, BALL & LYNCH

17
18 By 

19 DALE L. ALLEN, JR.
20 DIRK D. LARSEN
21 Attorneys for Defendant
22 CITY OF CLEARLAKE
23
24
25
26
27
28